

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1190

To be argued by
THOMAS J. O'BRIEN

B
Pop

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

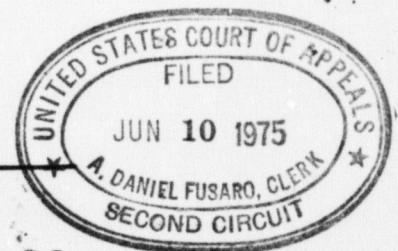
DONALD SHERMAN,

Defendant-Appellant.

*On Appeal from the United States District Court for the Eastern
District of New York*

APPENDIX FOR DEFENDANT-APPELLANT

THOMAS J. O'BRIEN
Attorney for Defendant-Appellant
2 Pennsylvania Plaza
New York, New York 10001
736-7007



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DOCKET ENTRIES

75CR 154

WEINSTEIN, J.

724196

C. Form No. 100

CRIMINAL DOCKET

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

U.S. GARY WOODFIELD

vs.

DONALD SHERMAN

For Defendant:

DID AID IN THE OFFER OF A BRIBE.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,	\$500.00	4-25-75	Honorable Court	5	5
Clerk,		5-1-75	Prothonotary		
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
3/3/75	Superseding Information filed.
3/3/75	Before WEINSTEIN, J. - Case called - Deft and counsel Thomas J. O'Brien present. Deft after being advised of his rights by the court and on his own behalf enters a plea of guilty - sentence adjd without date - bail contd
4/22/75	Notice of motion to withdraw plea of guilty filed ret. 4/25/75
4/24/75	Affidavit in opposition of motion to withdraw plea of guilty
4-25-75	Before WEINSTEIN J - case called - deft & counsel T.O'Brien present - motion to set aside plea of guilty argued and denied - So Ordered. Deft sentenced to imprisonment for one year pursuant to 18:3651 - deft to serve one month at a community treatment center and the execution of remainder of sentence is suspended & the deft is placed on unsupervised probation for 11 months. Deft to find \$5 000 payable as the probation dept directs over the

75CR 154

[illegible]

SUPERSEDING INFORMATION (Filed March 3, 1975)

3a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

DONALD SHERMAN,

Defendant.

SUPERSEDING
INFORMATION

Cr. No. 75 CR 154
(T. 18, U.S.C., §209(a)
and §2)

----- X

THE UNITED STATES ATTORNEY CHARGES:

On or about the 19th day of September 1969, within the Eastern District of New York, the defendant DONALD SHERMAN, a source other than the Government of the United States, knowingly and unlawfully did aid and abet the payment of approximately Fifty Dollars (\$50.00) to Edward Goodwin in supplementation of the salary he received during the period from the United States Government, as compensation for his services as an appraiser employed by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States. (Title 18, United States Code, Sections 209(a) and 2).

UNITED STATES ATTORNEY

MINUTES OF PLEA OF GUILTY

4a

3

THE CLERK: Donald Sherman.

MR. O'BRIEN: At this time, your Honor,
the defendant Donald Sherman would move to
enter a plea of guilty to the superseding
information.

THE COURT: What are the underlying
indictments?

MR. WOODFIELD: Your Honor, the underlying
indictment is 72-CR-596.

THE COURT: Is Mr. Sherman the only
outstanding defendant in 596?

MR. WOODFIELD: No, your Honor.

THE COURT: That still remains open?

MR. WOODFIELD: There are other defendants.

THE COURT: How old are you, Mr. Sherman?

THE DEFENDANT: Thirty-seven.

THE COURT: How much education have you
had?

THE DEFENDANT: Well, I have a law degree,
LLB degree.

THE COURT: From where?

THE DEFENDANT: The Blackstone School of
Law.

THE COURT: Have you been admitted to

1
2 practice?

3 THE DEFENDANT: No.

4 THE COURT: Have you ever been treated
5 for a mental or emotional problem?

6 THE DEFENDANT: Yes.

7 THE COURT: When?

8 THE DEFENDANT: Currently.

9 THE COURT: What is the nature of the
10 problem and the treatment?

11 THE DEFENDANT: Well, a lot of it, of
12 course, having to do with this proceeding.
13 The last three or four years.

14 THE COURT: Who is treating you?

15 THE DEFENDANT: Psychiatrist.

16 THE COURT: What is his name?

17 THE DEFENDANT: I can furnish the name.

18 THE COURT: Pardon me?

19 THE DEFENDANT: Would you like the name?

20 THE COURT: I would.

21 THE DEFENDANT: Melvin Levine. I believe
22 it's 285 Central Avenue, Lawrence, Long Island.

23 THE COURT: What is his diagnosis?

24 THE DEFENDANT: Well, I'm - - the diagnosis
25 is nothing other than the fact that I'm presently

here under the circumstances.

THE COURT: How often do you see him?

THE DEFENDANT: Weekly.

THE COURT: Have you ever been in an institution?

THE DEFENDANT: No.

THE COURT: Are you taking any drugs?

THE DEFENDANT: Yes.

THE COURT: What?

THE DEFENDANT: Tranquilizers.

THE COURT: Prescribed by him?

THE DEFENDANT: Yes.

THE COURT: What are the names of the drugs?

THE DEFENDANT: Valium, Stelazine, Sinequan. These are antidepressants.

THE COURT: What are the amounts of the drugs, do you know?

THE DEFENDANT: Yes. Stelazine would be five milligrams. Sinequan, a hundred milligrams; and the Valium at my particular discretion.

THE COURT: Is that per day?

THE DEFENDANT: Two of them per day, yes.

THE COURT: Have you taken those drugs

1
2 today?

3 THE DEFENDANT: Well, actually you take
4 them at night, you know, prior to the day. So
5 it doesn't make you drowsy or give you any ill
6 effects.

7 THE COURT: Did you take them last night?

8 THE DEFENDANT: Yes.

9 THE COURT: Have they interfered with
10 your ability to reason clearly and understand
11 the nature of these proceedings?

12 THE DEFENDANT: Not at all.

13 THE COURT: In your opinion, Mr. O'Brien,
14 having discussed this with your client presumably
15 over many months, is he, in your opinion, capable
16 of understanding the proceedings?

17 MR. O'BRIEN: Yes, your Honor.

18 THE COURT: And of making the necessary
19 decisions?

20 MR. O'BRIEN: Yes, your Honor.

21 I also did receive a letter from the
22 psychiatrist and it really stated that Mr. Sherman
23 was depressed. I showed a copy of that letter
24 to the U.S. Attorney and, in my opinion, there is
25 no legal reason why Mr. Sherman doesn't understand

1
2 the nature of the proceedings and the consequences
3 of his acts and that he's fully competent to
4 enter a plea.

5 THE COURT: He appears to be alert and
6 understanding to me, but if you require time
7 for a hearing on this issue, I will be happy to
8 give it to you.

9 MR. O'BRIEN: No, your Honor. We waive
10 a hearing.

11 THE COURT: Has anybody made any threats
12 or promises to induce you to plead guilty?

13 THE DEFENDANT: Nothing - - nothing unusual,
14 nothing other than the normal course of - -

15 MR. O'BRIEN: Your Honor, I will state
16 the - -

17 THE COURT: I would like to hear it from
18 him.

19 THE COURT: Nothing other than the normal
20 procedure, the possibility of a superseding
21 indictment. Whatever that I guess is - - is
22 mandatory procedure. Other than that, nothing.
23 Nothing.

24 THE COURT: Do not tell me about "normal
25 procedure." I want to know what your under-

1
2 standing of this situation is.

3 THE DEFENDANT: My understanding is the
4 nature of the indictment, I could understand
5 clearly and the - - the admission of guilt I
6 believe is reasonable, under my - - under the
7 circumstances.

8 THE COURT: You know you are open now
9 to be sentenced to one year in prison?

10 THE DEFENDANT: Yes.

11 THE COURT: With a \$5,000 fine, in addition.

12 Has anybody indicated to you that you
13 would get less than that?

14 THE DEFENDANT: Well, that is the maximum.
15 I realize that.

16 THE COURT: Do you know that nobody has
17 discussed this with me and that I can, after I
18 read the probation report and hear you, give you
19 a year in prison and a \$5,000 fine?

20 THE DEFENDANT: Yes.

21 THE COURT: There is no agreement that
22 has been made with me? You understand that?

23 THE DEFENDANT: Nothing that I am aware
24 of. Nothing that I am aware of.

25 THE COURT: What is the Government's

1
2 submission?

3 MR. WOODFIELD: Well, your Honor, it
4 has been discussed and it is the Government's
5 agreement with Mr. Sherman, through his counsel,
6 Mr. O'Brien, that the underlying counts naming
7 Donald Sherman and Flatbush Equity Corporation
8 contained in 72-CR-596 will be dismissed at the
9 time of sentencing to this superseding information.

10 THE COURT: Has that been put in writing,
11 in a letter?

12 MR. WOODFIELD: No, your Honor.

13 THE COURT: Isn't that the normal practice?

14 MR. WOODFIELD: It is, your Honor.

15 THE COURT: Why wasn't it done in this
16 case?

17 MR. WOODFIELD: I really don't know, your
18 Honor.

19 Very often a letter could be composed
20 even after the entering of a plea, I think,
21 because this matter has been moved ahead some-
22 what rapidly. We haven't had time to put this
23 in writing, but I think that is the full under-
24 standing between the defendant and the Government.

25 MR. O'BRIEN: Your Honor, there is - - it

1
2 goes a little further, in that there is a
3 possibility - - any other acts that the Government
4 may become aware of, past acts, around the same
5 period of time, they would not be any - - any
6 additional prosecution as a result of those acts.

7 MR. WOODFIELD: That is correct, your Honor.

8 MR. GOULD: FHA related.

9 MR. O'BRIEN: Yes, FHA related.

10 I believe we also mentioned income tax,
11 possible, but FHA - - FHA or VA related.

12 THE DEFENDANT: Present or future, from
13 my understanding.

14 MR. O'BRIEN: You cannot have anything
15 in the present, Mr. Sherman.

16 THE COURT: No. There is no agreement
17 that you will not be prosecuted for any act that
18 you do from now on.

19 THE DEFENDANT: Oh, no. I mean up until
20 this particular time. I had understood.

21 MR. WOODFIELD: Yes, your Honor. That is
22 the understanding, since this is being discussed,
23 this will be reduced to writing.

24 THE COURT: I think it is desirable to do
25 so.

1 Did anybody make any threats to you?

2 THE DEFENDANT: No, no threats at all.

3 THE COURT: The charge is that on or
4 about the 19th day of September, 1969, within
5 the Eastern District of New York, you, a source
6 other than the Government of the United States,
7 knowingly and unlawfully did aid and abet the
8 payment of approximately fifty dollars to
9 Edward Goodwin, in supplementation of the salary
10 he received during the period from the United
11 States Government, as compensation for his
12 services as an appraiser employed by the Federal
13 Housing Administration of the Department of
14 Housing and Urban Development, an agency of the
15 United States.

16 You understand that this court is prepared
17 to try you before a jury, which is your constitu-
18 tional right.

19 The Government would have to prove you
20 guilty beyond a reasonable doubt and you would
21 have many other protections.

22 Have you discussed them with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you wish to waive them?
25

1
2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand there
4 will be no appeal from my decision?

5 THE DEFENDANT: Yes.

6 THE COURT: As there would be if you
7 were found guilty? You understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Tell me, in your own words,
10 what you did.

11 THE DEFENDANT: Well, in that particular
12 time, as mentioned, as indicated, Eastern Service
13 contacted my office and had stated that an
14 arrangement had been made to see to it that an
15 increase was obtained on this particular building.
16 I was aware of the act indicated, that it was
17 taken care of by this Mr. Goodwin.

18 The money reflected was to - - was to
19 have been paid at the closing of the deal. In
20 other words, reflected in what they call discount
21 points, which amounted to eighteen or nineteen
22 hundred dollars. So whatever monies were expended
23 by them, it was made up at the closing or at the
24 time of closing.

25 But I was - - it was indicated to me that

1
2 this arrangement had been made and indirectly
3 this was done on my behalf and the money was
4 paid, was included in the discount or was billed
5 to me at the time of the closing.

6 THE COURT: Is there any other inquiry I
7 should make at this time?

8 MR. O'BRIEN: No, your Honor.

9 THE COURT: Any other inquiry?

10 MR. WOODFIELD: No, your Honor.

11 THE COURT: Do you have any questions
12 you wish to ask me?

13 THE DEFENDANT: None whatsoever.

14 THE COURT: How do you plead to the
15 superseding information, guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: I accept the plea.

18 It will take about eight weeks to get
19 a probation report.

20 What is the status of the defendant?

21 MR. O'BRIEN: I believe he is on his
22 own recognizance. Is that correct?

23 THE DEFENDANT: Yes.

24 MR. WOODFIELD: Of course, no objection.

25 THE COURT: You will be continued in the

1
2 present status. Keep in touch with your attorney.

3 If you should change your job or your residence,
4 let them know so they will know how to get you.

5 Thank you.

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PLEASE TAKE NOTICE, that upon the annexed

affidavit of Thomas J. O'Brien, attorney for the defendant, sworn to the 18th day of April, 1975, the undersigned will move this Court on behalf of defendant, Donald Sherman, before Honorable Jack B. Weinstein, United States District Judge, in Courtroom 10, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 25th day of April, 1975, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order:

Pursuant to Rule 32(d) of the Federal Rules

Defendant's Notice of Motion to Withdraw Plea of
Guilty

17a

For such other relief as to this Court may seem
just and proper.

Dated: New York, New York
April 18, 1975

YOURS, etc.

THOMAS J. O'BRIEN
Attorney for Defendant
2 Pennsylvania Plaza
New York, N. Y. 10001
Phone: 212-947-6147

TO: Clerk of the United States
District of New York
225 Cadman Plaza East
Brooklyn, N. Y. 11201

HON. DAVID G. TRAGER,
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N. Y. 11201

AFFIDAVIT OF THOMAS J. O'BRIEN IN SUPPORT OF MOTION TO
WITHDRAW PLEA OF GUILTY ANNEXED TO FOREGOING
NOTICE OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
:
UNITED STATES OF AMERICA,
:
-against-
:
DONALD SHERMAN,
:
Defendant.
:
----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

THOMAS J. O'BRIEN, being duly sworn deposes
and says:

1. I am the attorney retained by the defendant
and I submit this affidavit in support of the defendant's motion
to withdraw his plea of guilty.

2. On March 3, 1975 the Information 75CR154 was
filed and the defendant entered a plea of guilty on that
date.

3. The Information charged, in pertinent part,
as follows:

"On or about the 19th day of September,
1969, within the Eastern District of
New York, the defendant, Donald Sherman,
a source other than the Government of
the United States knowingly and unlaw-
fully did aid and abet the payment of
approximately fifty dollars to Edward
Goodwin, in supplementation of the sal-
ary he received during the period from
the United States Government . . ."
in violation of 18 U.S.C. §209.

**Affidavit of Thomas J. O'Brien in Support of Motion to
Withdraw Plea of Guilty Annexed to Foregoing Notice
of Motion**

4. The underlying Indictment, 72 CR 596, did not charge the defendant with this crime but rather charged the defendant with bribery in violation of 18 U.S.C. § 201(b) (1). Moreover, the underlying indictment did not charge the defendant with any crime occurring on or about September 19, 1969.

5. Section 3282 of Title 18 provides, in pertinent part, as follows:

"... no person shall be prosecuted, tried, or punished for any offense not capital, unless the indictment is found or the information is instituted within 5 years next after such offense shall have been committed.:

6. The period of limitations for the crime to which the defendant pled guilty expired on September 19, 1974, five and one-half months prior to the Information being instituted.

7. That the plea to a crime barred by the Statute of Limitations is a nullity or in the alternative that any sentence based upon that plea would be unlawful.

8. The Government advised the defendant prior to his plea of guilty that there was a strong possibility of a new indictment being returned against him but that if he pled guilty, no indictment would be returned.

Affidavit of Thomas J. O'Brien in Support of Motion to
Withdraw Plea of Guilty Annexed to Foregoing Notice
of Motion

9. The defendant advised me that the fear of this new indictment was the reason he pled guilty.

10. At the time the plea was entered the defendant stated in answer to the Court's question:

"Has anybody made any threats or promises to induce you to plead guilty?"

"Nothing other than the normal procedure, the possibility of a superseding indictment. Whatever that I guess is - is mandatory procedure. Other than that nothing, nothing. (Minutes of Plea, Page 7).

11. The defendant also advised the Court at the time the plea was entered that he had an emotional problem and that he was under the care of a psychiatrist. (Minutes of Plea, Pages 4-5.)

12. In view of the defendant's emotional instability, coupled with the fear of another indictment, it necessitates the conclusion that the plea was not voluntary.

WHEREFORE, your deponent respectfully requests, in the interest of justice, that the defendant be permitted to withdraw his plea of guilty under Information 75 CR 154 and to exercise his right to a trial on Indictment 72 CR 596.

Sworn to before me this
18th day of April, 1975

THOMAS J. O'BRIEN

GOVERNMENT'S AFFIDAVIT IN OPPOSITION (Filed April 24, 1975) 21a
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

AFFIDAVIT IN OPPOSITION

DONALD SHERMAN,

75 CR 154

Defendant.

----- X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:
EASTERN DISTRICT OF NEW YORK)

GARY A. WOODFIELD, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney
duly appointed according to law, on the staff of DAVID
G. TRAGER, UNITED STATES ATTORNEY for the EASTERN DIS-
TRICT OF NEW YORK, and am familiar with all of the facts
and proceedings heretofore had herein.

2. I make this affidavit in opposition to
the defendant's motion dated April 18, 1975, to with-
draw his plea of guilty pursuant to Rule 32(d), Federal
Rules of Criminal Procedure.

3. On March 3, 1975, a superseding information
(75 CR 154) was filed and the defendant entered a guilty
plea to a violation of Title 18, United States Code,
Sections 269 and 2. This information alleged, in sub-
stance, that on or about September 19, 1969 the defendant
aided and abetted the supplementation of Edward Goodwin's
governmental salary in the amount of Fifty Dollars.

4. As expressed by your affiant at the time of the defendant's plea of guilty, this plea was in satisfaction of the underlying indictment (72 CR 596) which charged the defendant with ten counts of indirectly bribing Edward Goodwin, in violation of Title 18, United States Code, Sections 201(b)(1) and 2, as well as conspiracy to do the same.

5. Defendant contends that the superseding information (75 CR 134) does not arise out of any of the counts contained in the underlying indictment (72 CR 596), and thus it is barred by the controlling statute of limitations provision (Title 18, United States Code, Section 3282). Therefore, defendant contends, his plea of guilty is a nullity and any sentence imposed would be unlawful.

6. Defendant's contentions find no support in the facts. Count 22 of the indictment 72 CR 596 charged that on or about September 11, 1969 defendant indirectly payed Edward Goodwin Fifty Dollars with intent to influence his official acts. In preparation of the bill of particulars for the indictment, the Government became aware of the fact that this payment, relating to a property appraisal at 831 Bedford Avenue, Brooklyn, New York, was, in fact, made on September 19, 1969. Therefore, the bill of particulars for the indictment 72 CR 596 reflects this correction. Consequently, when the superseding information was prepared it also reflected this corrected date. Therefore, since the superseding information arises out of

Count 22 of the underlying indictment, a conviction of the defendant on the information is not barred by the statute of limitations.*

7. Defendant further contends that his plea of guilty was not voluntary because it was entered due to a fear arising from the Government's informing him of the possibility of a new indictment plus emotional instability.

8. In discussions with the defendant's attorney the Government advised, as it has with all such defendants who have entered into plea agreements in these FHA cases, that the Government's investigation into the FHA is continuing and the possibility exists that new indictments may be returned. However, a plea at this time would satisfy not only the outstanding indictment but all other FHA related offenses which occurred during this period of time. In this particular defendant's case, the Government is aware of additional evidence involving the defendant in other FHA related criminal activities. This information was provided to defense counsel and the subsequent agreement reached was fully stated on the record at the time defendant's plea was entered**

* Moreover, such a defense does not go to subject matter jurisdiction and thus is waived by a plea of guilty, at least where, as here, the defense is not clear and not resolvable from the face of the superseding information. United States v. Doyle, 348 F.2d 715, 718-719 (2d Cir. 1965). See also Rule 12(b)(2), Federal Rules of Criminal Procedure, the accompanying Advisory Committee Note, and the discussion in Wright, Federal Practice and Procedure, Section 193.

** It should be noted that the Government, in relying upon the agreement reached with the defendant, has not continued its investigation and has not returned any new indictment against this defendant. If the Court vacates the defendant's guilty plea, the statute of limitations may very well have run on some of these additional offenses, thus seriously prejudicing the Government.

(Plea minutes, March 3, 1975, pp. 8 - 10). This statement of the Government's position, which was fully explained to defense counsel and stated on the record at the time of the entry of the guilty plea, can hardly be considered a coercive factor in the defendant's decision to plead guilty.

9. Defendant's contention that his plea was not voluntary because of emotional instability is likewise without merit. At the time of the entry of the plea, the Court questioned the defendant concerning his psychiatric care and the medication he was presently taking. The defendant stated that his medication did not interfere with his ability to reason clearly and to understand the proceedings. Further questioning by the Court of defendant's counsel elicited counsel's opinion that his client was "... fully competent to enter a plea." (Minutes of plea, March 3, 1975, pp. 6, 7). The Court also made a personal observation of the defendant's alertness and ability to understand the proceedings. (Minutes p. 7). The defendant, who waived on the record a hearing to consider the issue of competency at the time of the plea, now provides no new information concerning this issue in his moving papers. Certainly the Court's personal observations at the time of the plea, together with the questions asked the defendant himself and the opinion of the defendant's counsel, are a more meaningful measure of the defendant's emotional instability than blanket conclusory statements made by defense counsel now in his moving papers.

10. A reading of the minutes of the defendant's entry of a plea of guilty clearly indicate that the plea was entered voluntarily and in full satisfaction with Rule II, Federal Rules of Criminal Procedure. At no point in the proceedings did the defendant or his attorney make any showing that the defendant's plea of guilty was anything other than freely and intelligently entered in order to obtain the benefits of a favorable plea bargain.* Having provided no sufficient basis to warrant withdrawal of his guilty plea, defendant's motion should be denied.

WHEREFORE, your deponent respectfully requests that the defendant's motion to withdraw his guilty plea be denied.

Dated: Brooklyn, N.Y.
April 23, 1975

Gary A. Woodfield
Assistant U.S. Attorney

Sworn to before me this
23rd day of April 1975

* It should be noted that other defendants in these PHA cases have appeared before this Court for sentencing to the same misdemeanor to which this defendant has pled guilty. (United States v. Joshua, 75 CR 29, sentenced: March 28, 1975; United States v. Stroh, 75 CR 70, sentenced: April 1, 1975; United States v. Horowitz, 74 CR 809, sentenced: April 4, 1975; United States v. Libin, 75 CR 125, sentenced: April 11, 1975; and United States v. Shatzman, 75 CR 69, sentenced: April 18, 1975.) These sentences, all roughly uniform, were imposed after this defendant pled guilty but prior to his sentence. Therefore, the defendant can reasonably expect a sentence similar to those stated above and following this basic pattern of sentencing absent special circumstances. Because of this unique situation, it is submitted that the defendant's attempt now to withdraw his plea is analogous to that of a defendant attempting to withdraw a guilty plea after a sentence has been imposed. See United States v. Needles, 472 F.2d 652 (2nd Cir. 1973); United States v. Fernandez, 428 F.2d 578 (2d Cir. 1970). In any event all defendant has shown is a bare desire to stand trial, which is not a sufficient showing to warrant the relief sought.

MINUTES OF HEARING ON MOTION

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA :

5 -against- :

75 CR 154

6 DONALD SHERMAN, :

7 Defendant. :

3 -----X

United States Courthouse
Brooklyn, New YorkApril 25, 1975
9:30 a.m.

B E F O R E :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: GARY WOODFIELD and RONALD De PETRIS, ESQS.
Assistant United States Attorneys

THOMAS O'BRIEN, ESQ.
Attorney for Defendant

- - -

1 THE COURT: Have you had an opportunity to read
2 the Probation Report?

3 MR. O'BRIEN: I have not, your Honor.

4 THE COURT: Would you like an opportunity to read
5 it?

6 MR. O'BRIEN: Yes, your Honor. I would first
7 like to argue my motion to withdraw the plea of guilty.

8 THE COURT: Of course you may.

9 MR. O'BRIEN: Your Honor, there are two grounds
10 that I raise in this motion: first is the statute of
11 limitations.

12 The Government's affidavit in opposition answers
13 that by stating that there was a count in the prior
14 indictment which covered it. I don't agree with that
15 for two reasons: One, in the indictment they did
16 charge that there was -- that on September 11, 1969
17 that the crime occurred and they charge it with
18 reference to a particular piece of property and they
19 also do charge, of course, bribery.

20 The superseding information charges September
21 the 19th, not in connection with any particular piece
22 of property; and, finally, your Honor, that is not a
23 lesser included offense, as your Honor so ruled in
24 another trial; that the misdemeanor is not a lesser
25 included offense of the bribery charge and therefore it

1 is a different crime and that crime is just plainly
2 without the statute of limitations.

3 Accordingly, I think that any sentence imposed
4 on Mr. Sherman at this time would be unlawful.

5 THE COURT: I am perfectly willing to allow
6 him to withdraw his plea. We will put him on trial
7 immediately.

8 MR. O'BRIEN: Yes, your Honor.

9 THE COURT: We will choose a jury at once.

10 MR. WOODFIELD: The Government does object to
11 the withdrawal of the plea, as stated in the affidavit
12 which has been filed.

13 THE COURT: I don't think there is any basis for
14 it.

15 MR. WOODFIELD: The Government contends that
16 there really is no basis for the withdrawal of the
17 plea.

18 THE COURT: There isn't any. But he will stand
19 trial on the charge.

20 MR. De PETRIS: Your Honor, the cases say that
21 you have to submit something more than just a bare
22 desire to stand trial. This defendant has seen the
23 pattern of sentencing that has been involved with the
24 other defendants since his plea of guilty. He has
25 seen the Harvey trial which perhaps gave him some hope

1 and all he now exhibits is a mere desire to stand
2 trial.

3 THE COURT: You have your witnesses, don't you?

4 MR. DE PETRIS: That is a problem, your Honor.
5 We have released Mr. Goodwin from any further
6 responsibilities.

7 THE COURT: Where is he?

8 MR. WOODFIELD: The documents have been
9 sent back, files -- no one knows at this point where
10 documents are.

11 THE COURT: Would you be prejudiced, in fact?

12 MR. DE PETRIS: Yes, your Honor. Mr. Goodwin
13 has been released after years of co-operation.
14 Number two, the other witness who would be in the
15 second indictment which we would hand up and
16 consolidate with this for trial, another appraiser
17 who was bribed directly by this defendant. We
18 stopped the investigation with respect to him and we
19 could very well be prejudiced there.

20 MR. WOODFIELD: As your Honor is aware, there
21 are no remaining defendants outstanding and once we
22 did resolve these outstanding defendants in these
23 indictments, we moved on and consequently we moved
24 files back to where they originally came from, God
25 knows how many years ago.

1 The Government would suffer some prejudice.

2 MR. DE PETRIS: The case is closed. This FHA
3 case is now closed. There are no remaining trials
4 left.

5 MR. O'BRIEN: There has only been a difference
6 now of approximately six to eight weeks. I think
7 that Mr. Goodwin certainly could be gotten back and
8 any other witnesses actually obtained.

9 THE COURT: How many counts are there in the
10 original indictment?

11 MR. WOODFIELD: Ten bribery counts and the
12 conspiracy count.

13 MR. O'BRIEN: I think for the trial -- I don't
14 think you intend to go into the conspiracy count.
15 Obviously you can do anything you want now, I am not
16 holding you to that.

17 THE COURT: Are you going to object to the
18 reinstatement of that indictment?

19 MR. O'BRIEN: Of course not.

20 THE COURT: When can you be prepared?

21 MR. DE PETRIS: June.

22 THE COURT: I am prepared to try it next week.

23 MR. DE PETRIS: Your Honor, we all have
24 extremely tight schedules for the next month. We
25 have the brief due in the FHA case; we have the brief

1 due in the Fayer case.

2 Mr. Woodfield has two or three trials
3 scheduled in the month of May. We have to get
4 together our witnesses, we have to continue the
5 other investigation and hand up an indictment, the
6 second indictment which we will consolidate for
7 trial.

8 We were prepared for trial when the plea was
9 agreed upon.

10 MR. WOODFIELD: And we were prepared to come
11 down very possibly with another indictment, but we
12 stopped that when we entered into an agreement with
13 this plea.

14 The Government might very well have been
15 prejudiced by the length of time it has been since
16 the time we agreed to enter this plea on this new
17 indictment.

18 Very likely the statute of limitations may
19 have run on that because these are offenses that
20 occurred in '70 and '71.

21 MR. O'BRIEN: If there is any prejudice so
22 far as that is concerned, the statute of limitations
23 is concerned, I would be willing to waive that
24 defense.

25 THE COURT: That was the next thing. Is the

1 statute of limitations waivable?

2 MR. O'BRIEN: Yes, it is.

3 THE COURT: Doesn't he waive by pleading
4 guilty?

5 MR. O'BRIEN: No, your Honor, he does not.

6 MR. DE PETRIS: He does. If you would like
7 to see United States versus Doyle, the Second
8 Circuit case we cited in our affidavit, it is waived.

9 MR. O'BRIEN: I have not read the Doyle case.
10 The other cases that I have read indicate --

11 MR. WOODFIELD: The first footnote, your
12 Honor, in the affidavit.

13 MR. O'BRIEN: Every case that I have read on
14 it is where there was a statute of limitations
15 problem was after a conviction, after a conviction
16 after trial when he tried to raise it for the first
17 time --

18 THE COURT: A plea of guilty is the equivalent
19 of a conviction after trial.

20 MR. O'BRIEN: Well, I question that, your
21 Honor, because if you read the section on the statute
22 of limitations, it says that no man may be tried,
23 prosecuted, or punished if it is without the statute
24 of limitations, and in all of these cases the man had
25 already been punished when he first waived it. Here

1 we do have the punishment outstanding.

2 THE COURT: Let me look at this case.

3 What's your next point?

4 MR. O'BRIEN: The next point, your Honor, is
5 that in reading the minutes and talking with my
6 client, I feel that the plea was not entirely
7 voluntary.

8 THE COURT: May I see the minutes, please?

9 MR. WOODFIELD: Yes.

10 MR. O'BRIEN: I think you have to read the
11 whole minutes, your Honor, to get the feeling.

12 (Pause.)

13 THE COURT: Mark the minutes as an exhibit.

14 THE CLERK: Court Exhibit 1.

15 (So marked.)

16 THE COURT: These are the minutes of
17 March 3, which I will now read in their entirety at
18 the request of the defendant.

19 MR. O'BRIEN: There was a statement made by
20 the Government during the negotiations we have had
21 prior to the entering of the plea in which the
22 Government did state that a continuing investigation
23 was going on and that a new indictment may come down.

24 The defendant has since advised me that it was
25 because of the fear of a new indictment that he

1 entered his plea; and, in addition to that, your
2 Honor, he was undergoing psychiatric help for
3 emotional instability. I don't claim that that was
4 a ground in and of itself --

5 THE COURT: I observed him carefully. I
6 questioned him carefully and there is not the
7 slightest doubt in my mind, based on my observation
8 of him on a number of occasions, and the reports
9 which I have carefully studied, and my questioning
10 of him, that he is perfectly competent to respond.

11 MR. O'BRIEN: I agree with that entirely.
12 All I am saying is because there is some psychiatric
13 problem, emotional instability involved, I think
14 that, taken in conjunction with the fear of a
15 superseding indictment, that there is some doubt in
16 my mind as to whether or not the plea was voluntary
17 or not.

18 (Pause.)

19 THE COURT: I gave you an opportunity for a
20 hearing on this issue and you rejected it at
21 Page 7, and you indicated that you yourself had no
22 doubt of his competency.

23 I agree with you, there was no question
24 whatsoever of his competency.

25 MR. O'BRIEN: I should state, your Honor,

1 that it was right after we entered the plea --

2 THE COURT: Excuse me. There is a mistake
3 on Page 7 of the minutes which the reporter will
4 correct. It says:

5 "The Court: I would like to hear it from
6 him."

7 And then it says:

8 "The Court: Nothing other than the normal
9 procedure."

10 Obviously, the second reference to "The
11 Court" is "The Defendant".

12 That will be corrected.

13 MR. O'BRIEN: I agree with the correction,
14 your Honor.

15 THE COURT: On Page 10, the interjection of
16 the defendant indicates that he was completely in
17 control and was manipulating the whole operation
18 for his own benefit.

19 He makes it very clear that he wants to be
20 fully protected for everything up to that very
21 moment. It was clear to me, based on the statement
22 of the defendant at Pages 12 and 13, in light of my
23 knowledge of all of these FHA cases -- I have tried
24 a number of them and I have read extensive records,
25 and of the knowledge of Mr. O'Brien and of the

1 knowledge of the defendant, that what he was agreeing
2 to was that he had engaged in this conspiracy. For
3 that reason my inquiry was not more extensive, but
4 there wasn't any doubt in anybody's mind at the
5 table that this was sufficient to constitute a full
6 inquiry under -- what is it, Rule 11?

7 MR. DE PETRIS: Yes, your Honor.

8 MR. O'BRIEN: Your Honor, it really just does
9 seem to me that if the defendant wants to go to
10 trial, he should be given that right to go to trial.

11 THE COURT: I agree with you. And I did give
12 him the right. But I believe that this manipulation
13 of the Court at this late date is not desirable.

14 But I will hear your client if he wishes to
15 be heard.

16 THE DEFENDANT: Your Honor, if I might
17 interject. This matter is going over three years,
18 you know. Now, I don't know, some people might be
19 able to function under these circumstances, but I
20 haven't. And these three years cost me an impending
21 marriage, it cost me a situation where I haven't
22 been able to earn a living for three years. I
23 haven't been able to work a full week. I haven't
24 been able to earn anything more than a hundred dollars
25 a week for three weeks.

1 Now, the possibility of continuing this for
2 four or five years -- I mean, the possibility of
3 continuing this is impossible for me.

4 At the time of the pleading it seemed like
5 it would be over. But, you know, as you think about
6 it with a conviction it's never over. I don't know
7 whether I'll win. There is an excellent possibility
8 I'll lose, but I just feel I have a moral obligation.

9 My thinking at the time was to dispense with
10 the matter and be through with it because when you
11 consider being three years actually on bail and
12 limited to being in the Eastern District, I mean --

13 THE COURT: You were not so limited. You
14 could have at any time gone anyplace in the country.

15 THE DEFENDANT: It's easy to say, but in the
16 event you were refused it would make --

17 THE COURT: You had excellent counsel and he
18 would have advised you.

19 THE DEFENDANT: So I'm trying to explain --

20 MR. DE PETRIS: Judge Travia had a very easy
21 procedure that he used for all these defendants.
22 All they had to do was submit a letter.

23 MR. O'BRIEN: I don't question that, your
24 Honor. He could have traveled. It does come down
25 to it, I think there is a legal issue involved with

1 the statute of limitations.

2 This trial, if permitted, would not take
3 longer than two or three days.

4 THE COURT: I know it would not take long.
5 The problem is we were all set up for a trial. We
6 had a trial date scheduled.

7 When was it scheduled?

8 MR. O'BRIEN: I believe it was in May.

9 MR. DE PETRIS: April 21.

10 THE COURT: We have already gone past the
11 date. I have other matters.

12 MR. O'BRIEN: Your Honor, I would be willing
13 to try this at any time --

14 THE COURT: The Government has a problem now.
15 All its witnesses are disbanded. This matter really
16 has been closed up.

17 We had thirty or so cases here and they were
18 all closed. The whole operation is closed. We all
19 have to go on to new things. Decisions are made,
20 whether in retrospect they are sound or not, then
21 we go on. Life must go on.

22 MR. O'BRIEN: I would ask then that the
23 Government attempt to get in touch, make a good
24 faith effort, to get in touch with their witnesses
25 and see if they can get in touch with them.

1 I think it would shed a different light on
2 the picture if the Government were unable to get in
3 touch with their witnesses.

4 THE COURT: No, I think not.

5 Motion to set aside the plea is denied.
6 I am giving you Court Exhibit 2, which is the
7 Probation report. Take it, discuss it with your
8 client.

9 I will hear you on the sentence in about
10 twenty minutes.

11 MR. O'BRIEN: Your Honor, I would ask for an
12 adjournment of one week for the sentence so that
13 there is additional information that we would like
14 to submit to your Honor for consideration on the
15 sentence.

16 THE COURT: What?

17 MR. O'BRIEN: Various letters. One from a
18 doctor that Mr. Sherman --

19 THE COURT: We have a number of doctors'
20 letters here. We have a letter from Bernstein with
21 respect to Mrs. Sherman. We have an extensive
22 letter from Donaldson on the defendant. We have a
23 letter from Dr. Levine. We have a doctor -- a letter
24 from Dr. Kalish, signed by Dr. Parness.

25 We have an extensive Probation report. Tell

1 me me what is going to be in the letters and I will
2 accept it for the purposes of the plea.

3 MR. O'BRIEN: Yes, your Honor.

4 THE COURT: I am sure the Government is not
5 going to object. I don't see the point of
6 stringing this thing on. If there is any disputed
7 question of fact, of course I will be delighted to
8 give you a full hearing, hearing exhibits or take
9 any exhibits.

10 What is the point of extending this thing?
11 Get it over with.

12 MR. O'BRIEN: Yes, Judge.

13 THE COURT: Second call.

14 (Recess.)
15
16
17

18 (continued on next page)
19
20
21
22
23

1 THE CLERK: United States against Donald Sherman,
2 second call.

3 THE COURT: Have you had an opportunity to read
4 and discuss fully the probation report?

5 MR. O'BRIEN: I have, your Honor.

6 THE COURT: Is there any issue you want to raise
7 with respect to the accuracy of the report?

8 MR. O'BRIEN: There are issues that I want to
9 raise with the report, but not with its accuracy, your
10 Honor.

11 THE COURT: You may do so.

12 MR. O'BRIEN: Your Honor, I think the defendant
13 would like to make a statement -- would you prefer me
14 to go first? It doesn't matter to me.

15 THE COURT: You are presenting the case. You can
16 do it any way you wish.

17 MR. O'BRIEN: I prefer the defendant to make
18 his own statement.

19 THE DEFENDANT: Well, your Honor, with reference
20 to the indictment itself about bribing in ten instances,
21 indirectly bribing this Ed Goodwin. If I would have
22 had a knowledge of this bribery of \$50, then this bank,
23 which was the largest bank on the East Coast, reputed
24 to be the largest, they couldn't charge me \$2500 and
25 \$3,000 to close each deal if I had a specific knowledge

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1 of the \$50. I could say on the overall picture I had
2 a knowledge that there was something wrong, I had a
3 knowledge that they were exerting influence; maybe
4 that's why they were the biggest, because they were
5 accomplishing something in getting things done. But
6 as far as the specific knowledge of what they were
7 doing, I would take a lie detector test, I would do
8 anything that would be required of me to tell you that
9 I had no knowledge of what they were doing. I had a
10 general knowledge of something being done, but the
11 point of the matter was, there were so many people
12 doing business with this company, I felt fortunate in
13 the fact that I was able to talk to principals on a
14 personal basis where I was able to call them and say,
15 "Are you taking care of this? Are you closing this?"

16 But that in itself was something that was
17 advantageous. As far as the involvement, if I would
18 have had any kind of working knowledge as to how it
19 was done, whatever, I wouldn't have paid the large
20 discounts. The records are available.

21 So as far as Mr. Goodwin or anything like that,
22 I had no knowledge of that, and as far as the intri-
23 cacies of their operation, I wouldn't -- my indication
24 originally, I wanted to go to trial, I was preparing
25 to go to trial for three years; I was ready to go, but

1 when the Government indicated that they had more
2 witnesses, I thought there would be no end to it because
3 if I lost I knew I would have appealed the case, there
4 would be no end to it, it would go on and on and on
5 indefinitely, and I, over the past three years, I have
6 an LLB degree, I had an idea perhaps I could become a
7 lawyer or something. Now it's impossible.

8 The fact of even being a real estate broker,
9 that's -- that might even be an impossibility. I think
10 for the past years I have had enough torment. I really
11 wanted to go to trial. The thing that stopped me was
12 the fact that there would be no end. I could see myself
13 going on, if I lost, there would be no end, I would just
14 keep going on and going on and there would be no end
15 to it.

16 My doctor -- I mean my attorney wanted a delay
17 of a week. My doctor would tell you, I sat with him
18 and I couldn't reach a decision, I couldn't make a
19 decision of what I should do. The only thing he
20 suggested is to try to get rid of it, dispense with it
21 and finish with it so I can go on, because I have my
22 partner in the courtroom. I haven't been able to work
23 a full week in three years. I can work a couple of
24 days and whatever, but I just can't -- haven't been
25 able to work. Other people in the same predicament

1 have been successful in three years, not only have been
2 even more successful than even prior to the indictment,
3 but I have not been successful because I can't work
4 and I still have at this particular time, I have no
5 desire to be in the real estate business because I don't
6 think anything has been accomplished by this, it will
7 go on and on; these things will happen. I don't want
8 to be in the real estate business any more. I want to
9 get out of it because I know these things will happen
10 again. It will take a year, a year and a half, I don't
11 want to be involved, I want to go into another business
12 and that's one of the reasons why I wanted an acquittal
13 so it would give me an opportunity to do something else,
14 and now dependent on what the sentencing is here, my --
15 whatever outlook I have might be ruined based on this.

16 So what I am trying to say is I think over the
17 three years I have had enough and I think as far as
18 the indictment is concerned, sure, I had a knowledge
19 that something was being done, but as far as an acute
20 knowledge is concerned, I'm sure there are people that
21 had knowledge that there were things going on in high
22 government but nobody was going to write a letter to the
23 U.S. Attorney and tell them, "I think there is some-
24 thing wrong."

25 I mean, what the Government suggests is that

1 during these procedures, me doing business along with
2 2,000 other brokers, I should have contacted the U.S.
3 Attorney and say I think there is something wrong.

4 Now, in retrospect I can see the possibility of
5 saying that there is something wrong and not participat-
6 ing, but as far as accusations as to how and why and
7 what, I had no knowledge of this. I don't even know
8 why I have been indicted, to be honest with you, I don't
9 even know why. I guess I am just one of a number of
10 people. But as far as other people were concerned, maybe
11 if I was an attorney or something and I was a professional,
12 maybe I would have been acquitted or something because
13 of my minimal involvement, but I am not a professional,
14 I am not admitted to the Bar, and maybe there is a hope
15 that I can be admitted to the Bar some day, but depending
16 on what the sentence is, it's up to the Court.

17 But I think under the circumstances, I think I
18 have had more than enough. I just would have liked to
19 go to trial. It would have been a great set -- it would
20 have been to get an acquittal would have been -- but
21 I couldn't just go on with the possibility of additional
22 indictments alleging witnesses, and I am sure your
23 Honor is familiar with the witnesses, plenty of witnesses
24 around.

25 It means I have to confront six people, whether

1 they are telling the truth or not, I couldn't stand it.
2 There would be no possibility that I at that particular
3 time when I had pleaded guilty, I would be able to
4 face the possibility of having to disprove four or five
5 people. I just couldn't take it. There would be no
6 way that I could stand it or take it and the burden of
7 proof would be on me and I couldn't do it.

8 As far as the existing indictment, I do say, I
9 do admit that I had a knowledge that there was something,
10 but by the same token even, this company here was --
11 these people were alleged to have -- to be involved with
12 Chase Manhattan Bank where they were practically on a
13 social basis with Governor Rockefeller. So who am I at
14 this particular time to go ahead and say, hey, there
15 is something wrong, or maybe I shouldn't do business
16 with them.

17 Not only that, there was no other place even to
18 do business with at the time. So here I am in a position
19 here where I can't go any further. When I leave the
20 courtroom what am I going to do? I don't even know what
21 I could do for a living.

22 MR. O'BRIEN: Your Honor, with regard to the
23 probation report, it is accurate. On the other hand,
24 I don't think that Mr. Sherman should bear the brunt
25 of the Government's loss of millions of dollars.

1 Certainly he may be involved, but certainly not total
2 involvement.

3 The probation report says that he was minimally
4 involved in this matter, yet they put forth a great
5 number of facts in the probation report regarding the
6 foreclosures and millions of dollars being lost by the
7 Government.

8 I don't believe that any of Mr. Sherman's houses
9 were foreclosed. The other thing is on the indirect
10 bribery, I don't really see how Mr. Goodwin can say
11 that Mr. Sherman was involved in ten instances.

12 What I am saying, your Honor, is that Mr. Sherman
13 should be punished for what he had admitted to doing
14 and should not be in any other involvement -- and any
15 other involvement should not be considered.

16 I don't rely upon Mr. Goodwin and I don't think
17 your Honor should rely upon Mr. Goodwin.

18 The other thing I want to point out is that I
19 have handled a number of these cases, I have had a number
20 of defendants, and the one keynote of every defendant
21 coming into the office and talking with me is that they
22 all stated that the FHA was really to blame here and
23 that there were many things wrong with the FHA and that
24 you couldn't get anything, you couldn't get fair treatment
25 up there at FHA unless there was money paid.

1 Now, with Mr. Sherman I don't believe that he
2 actually did know -- actually had direct knowledge of
3 what payments were made, of who they were made to. I
4 think he did rely upon Eastern Service and the other
5 corporation involved, United, and just paid them what
6 they wanted to and probably looked the other way. What
7 he did I am not saying was right, but I can understand
8 how somebody can get involved in something like this.
9 He was in the real estate business. He ran a legitimate
10 operation. We are talking here at the outside of ten
11 houses that he had. He was a legitimate businessman.
12 There were hundreds of houses that he closed. He has
13 shown me lists, et cetera, of the business he ran.

14 I don't believe any of the people, the actual
15 people that he was dealing with, were hurt in the
16 situation. I agree that there probably was money paid
17 by Eastern Service and that Eastern Service then charged
18 Mr. Sherman discounts.

19 Mr. Sherman has been a difficult client. The
20 reason that I say that is that he has --we have discussed
21 this plea and this case for hours. I have probably
22 spent a hundred hours talking with Mr. Sherman, trying
23 to decide, or having him decide what he should do.
24 Emotionally I don't think -- I am not claiming that he
25 did not have the mental competency to understand what

1 was happening, but he is an emotionally disturbed person.
2 I really think that he has been through enough.

3 I know the anxiety that he has gone through,
4 your Honor. The probation report says that he does not
5 feel any guilt. Well, that is not true. I know what
6 he feels in talking with him, and it is rather difficult
7 to express it. I know the torture and I use that word
8 advisedly that he has gone through. He sits here, he is
9 very, very frightened as to what is going to what is
10 going to happen to him. He has a mother who does
11 suffer from chronic asthma. He does take care of his
12 mother. I don't think Mr. Sherman is a bad man, is
13 what I am saying, and I ask the Court to be lenient.

14 THE COURT: Does the Government have anything?

15 MR. WOODFIELD: No, your Honor.

16 THE COURT: Why did you choose this defendant and
17 prosecute this case?

18 MR. De PETRIS: He was one of the ones we had
19 evidence against.

20 THE COURT: What evidence did you have that you
21 knew what was going on?

22 MR. De PETRIS: We have the testimony of
23 Mr. Goodwin that Bernstein said he was paying on behalf
24 of this witness. We have the testimony of one of the
25 competitors, competitor companies of Eastern Service,

1 who was trying to get Mr. Sherman to go with his
2 company. He said no, he wouldn't because Eastern had
3 the connections, they could get him the right appraiser
4 and get the right appraiser with a sufficiently high
5 value.

6 We have the testimony of the official FHA --
7 an additional appraiser who says he received money
8 directly from Mr. Sherman.

9 THE COURT: Directly?

10 MR. De PETRIS: Yes.

11 MR. O'BRIEN: May I just know who that is, if
12 that is not confidential?

13 MR. De PETRIS: Kessler, VA President.

14 THE DEFENDANT: I did have a limited business with
15 the VA, because at the time of the indictment it was --

16 THE COURT: Did you give money to Kessler?

17 THE DEFENDANT: No.

18 THE COURT: You never gave him a dime?

19 THE DEFENDANT: No.

20 THE COURT: Never gave him anything?

21 THE DEFENDANT: No. As a matter of fact, I only,
22 I think, met him once.

23 THE COURT: I think this is a sad case, as all of
24 these cases are involving widespread corruption in which
25 people are dragged in --

1 THE DEFENDANT: Your Honor, it is not my inten-
2 tion to remain in this business. I don't want to be
3 in this business because I'm stating that this is going
4 to happen again.

5 I don't think anything is going to be learned
6 by it. I know it is going to happen again. I don't
7 want to have any part of it. I am prepared to withdraw
8 from the business.

9 Most of the defendants that have appeared in
10 front of you are still remaining in the business.
11 I have no activity, my activity for three years has been
12 negligible. I don't buy houses any more. I don't want
13 to get involved because I know what is going to happen.

14 The U.S. Attorney mentioned to me about a
15 Mr. Kessler. Just about nine months ago when we had a
16 situation where it was a compliance inspection, it was
17 a brokerage house that we didn't buy but we had sold
18 for someone where I myself -- there was nobody in the
19 office and I myself went down to the house where work
20 had to be done in order to satisfy a VA necessity to
21 fix and paint, and after the appraiser looked at it he
22 looked at me and I looked him and he looked at me and I
23 said to myself, "Well, here it goes all over again, and
24 nothing is being accomplished," and I looked at him
25 and I said, "Goodbye. I'm sorry, I can't help you."

1 Nothing is being accomplished, nothing is going
2 to be done and I don't want to remain in this business.

3 THE COURT: We can only try.

4 I sentence you to one year to serve one month in
5 the Community Treatment Center, the rest on probation,
6 and I fine you \$5,000 to be payable as Probation directs
7 over the period of probation.

8 MR. O'BRIEN: Your Honor, may that sentence be
9 stayed pending an appeal? I believe that Mr. Sherman
10 would like to appeal the denial of the withdrawal of the
11 plea.

12 THE COURT: Certainly.

13 MR. O'BRIEN: I will file a notice of appeal
14 certainly within 10 days.

15 THE COURT: Expedite it.

16 MR. O'BRIEN: I will.

17 MR. WOODFIELD: Your Honor, the Government would
18 move at this time to dismiss the remaining counts as
19 to both Donald Sherman and Flatbush Equity Corporation.
20 That is in Indictment 72 CR 596.

21 THE COURT: Motion granted with leave to reinstate
22 should the appeal result in a reversal.

23 MR. O'BRIEN: Yes, your Honor.

24 MR. WOODFIELD: Thank you, your Honor.

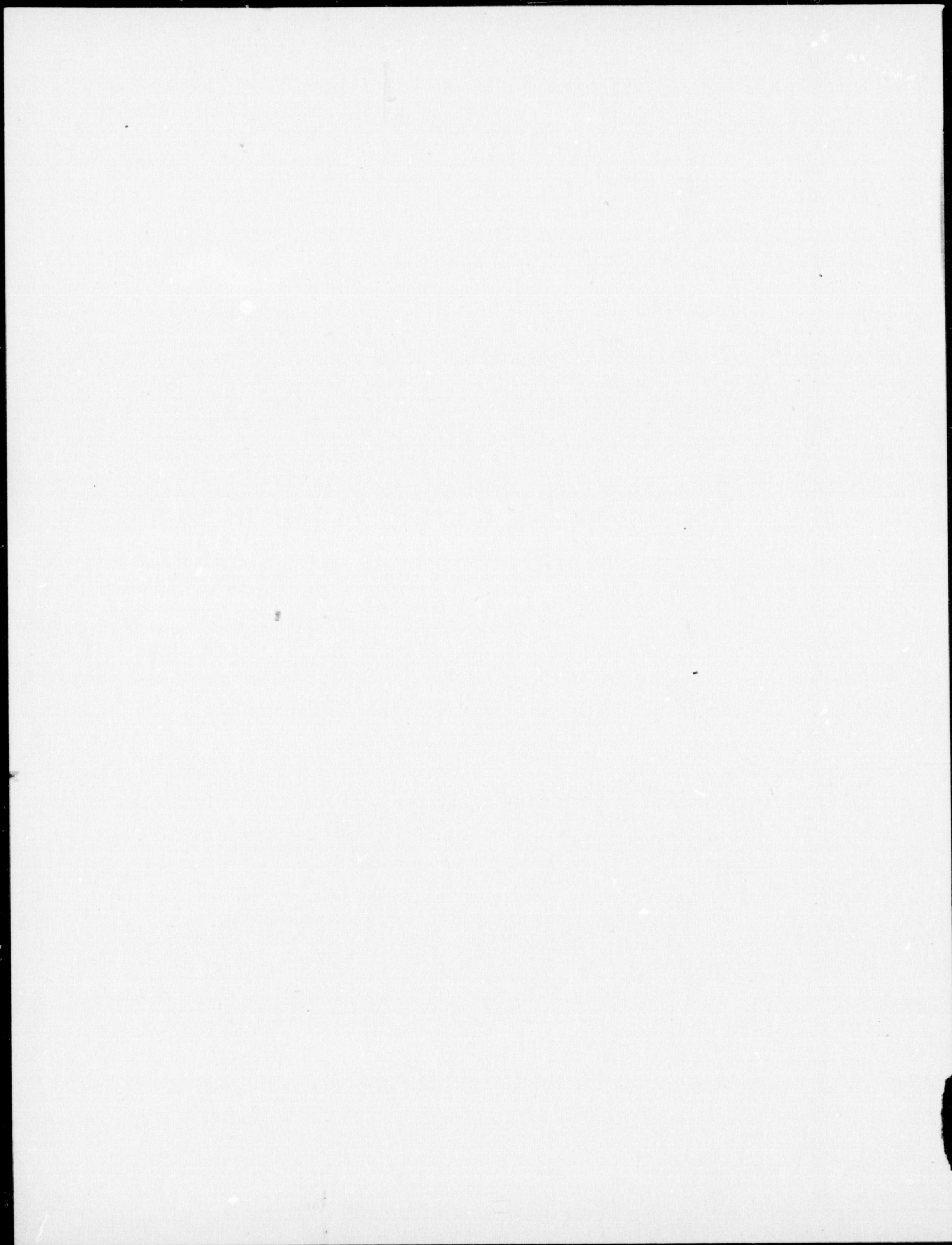
25 MR. De PETRIS: That closes out that.

1 THE COURT: Are there any other indictments
2 involving this defendant?

3 MR. De PETRIS: No, your Honor. That closes out
4 that indictment completely.

5 THE COURT: Thank you very much.

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COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

DONALD SHERMAN,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, being duly sworn,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York
That on the 10th day of June 1975 ~~1974~~ at 225 Cadman Plaza, Brooklyn, N.Y.
deponent served the annexed *Appendix* upon

David G. Trager, U.S. Attorney for the Eastern District

the Attorney in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 10th
day of June 1975 ~~1974~~

Victor Ortega
Print name beneath signature

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

